

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

RAJAN SONI VERSUS STATE OF RAJASTHAN.
Through mother Rajani w/o Kala Singh
natural guardian.

S.B.CRIMINAL APPEAL NO.225/2007 AND
S..B.CR.MISC APPLICATION NO.289/07
Section 454 Cr.P.C. against the
Judgment dated 21.2.2007 in Cr.. Case
No.23/2005 passed by Sh. Kailash
Chandra Sharma,RHJS, Special Judge
N.D.PS.Cases, Sri Gangangar.

DATE OF JUDGMENT : May 18th, 2007.

P R E S E N T

HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr.Pankaj Sharma, counsel for the appellant.
Mr.JPS Choudhary,Public .Prosecutor

BY THE COURT:

1. This appeal is directed against the judgment and order dated 21.2.2007 to the extent of confiscating the vehicle No.RJ-05C- 0096 passed by the Special Judge N.D.P.S.cases, Sri Gangangar, whereby the learned Special Judge confiscated the vehicle Jeep No.RJ-05-C-0096.
2. The brief facts of this appeal which are necessary to dispose of this appeal as well as cr.Misc.

application, in nut shell, are as follows :-

The jeep of the appellant was seized in F.I.R. No.122/2005 Police Station Sadulshahar and appellant is registered owner of the jeep No.RJ-05-C-0096. While disposing of Criminal Case No.23/05 dated 21.2.2007 (State vs Kala Singh @ Praveen Kumar & another) accused Kala Singh @ Praveen Kumar was convicted and sentenced under Sections 8/18, and 8/18 read with section 8/21 read with section 8/21 of the NDPS Act. Accused Dayarani @ Daya was convicted and sentenced for the offences under Sections 8/21, and 8/21 read with section 8/21 read with section 29 of the Act for 3 years rigorous imprisonment on each count and fine of Rs.20,000/- was imposed and in default of payment of fine to further under go for 6-6 months rigorous imprisonment. It was further ordered for confiscation of vehicle Jeep No.RJ 05C- 0096..

3. While deciding above case, Court observed that Opium and smack were recovered from the said jeep which was brought by the accused from Punjab and accused Kala Singh and Daya Rani were convicted and sentenced and jeep was confiscated. Rajan Soni s/o Kala singh aged 8 years-minor- through his natural guardian mother Smt.Rajni w/o Kala Singh filed application that owner of jeep No.RJ-

05C-0096 is Rajan Soni who is minor therefore, she filed appeal on his behalf to get said jeep. For the reasons mentioned in the application, the application for impleading of Rajan Soni – Minor, through his natural guardian Smt. Rajni w/o Kala Singh @ Praveen Kumar is allowed. . Amended caused titled is filed which may be placed on appropriate place. In this appeal the appellant has challenged the order regarding confiscation of said jeep but not challenged other part of the judgment. Hence, this appeal.

4. Heard learned counsel for the appellant and learned Public Prosecutor and perused the record of the case.
5. Learned counsel for the appellant states that vehicle Jeep RJ-05-C-0096 has been confiscated ,though, during the pendency of the trial, the aforesaid jeep was released on Suprudginama and none of the conditions imposed by the Court has been violated. In pursuance of the judgment of the trial court, the said jeep was confiscated by the police and accused appellants were convicted and sentenced as mentioned hereinabove.
6. Learned counsel for the appellant further urged that

admittedly the appellant being a minor and represented by the mother, is registered owner of the vehicle but he was neither served with any notice nor afforded any opportunity of hearing before ordering the confiscation of the said vehicle. Under the provisions of Sections 60 and 63 of the NDPS Act, such opportunity is a must before ordering the confiscation of the vehicle and thus, the order for confiscating of the said vehicle by the trial Court cannot be up-held and it must be set aside. Learned counsel states that the Court has already held by this Court in case of **Kailash & others vs State of Rajasthan 2006(1) Cr.L.R.(Raj.)320**, so order of confiscation of vehicle should be quashed and set aside and case should be remanded to decide the matter afresh after giving opportunity of hearing.

7. After going through the contention of the learned counsel for the appellant and facts of the case which revealed that the appellant has not been given opportunity of hearing before confiscation of the said vehicle, therefore, impugned order of confiscation of vehicle Jeep No. RJ-05-C-0096 is quashed and set aside and the matter is remanded to the trial Court to decide the matter afresh after affording an opportunity of hearing to the appellant and after following the due procedure of law, as envisaged under Sections 60

and 63 of the NDPS Act,1985.

8. Accordingly, the appeal and application are allowed to the extent as stated here-in-above.

(CHATRA RAM JAT)J.

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